



Notre Dame Law Review

Volume 4 | Issue 8

Article 1

5-1-1929

Chain Store Era and the Law

J. Ross Harrington

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

J. R. Harrington, *Chain Store Era and the Law*, 4 Notre Dame L. Rev. 491 (1929).

Available at: <http://scholarship.law.nd.edu/ndlr/vol4/iss8/1>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

THE NOTRE DAME LAWYER

A Monthly Law Review

"Law is the perfection of human reason"

Volume IV

MAY 1929

Number 8

THE CHAIN STORE ERA AND THE LAW

J. Ross Harrington

The ever increasing complexity of American life has brought about many new questions. One of the current, most interesting and as yet undecided of these questions is that of the chain stores. That the question is current is obvious, because this method of distribution has reached its magnitude of "bigness" only within the last ten or fifteen years. It is one of the most interesting questions since it concerns the general welfare of the entire populace and as well the prosperity and maintenance of the principles upon which the United States government was originally founded. The legality of chain store legislation has as yet to be settled by the United States courts. There are several cases on record, which we will later discuss but they offer but little assistance to the final decision that must be made sometime within the near future.

It has been stated that the chain store situation is current. However, this may be qualified to a certain degree in that its origin might be traced back to 1859. In that year the Great Atlantic & Pacific Tea Company was founded by George H. Hartford; the F. W. Woolworth Company was established in 1879; and the B. H. Kroger chain of grocery stores was begun in 1882.¹ At the time of Hartford's death, 1917, he had over three thousand stores, all combined under the one centralized management; during the last ten years this number has grown into a chain of over seventeen thousand, five hundred stores, covering the entire country from coast to coast, as well as in-

¹ For a history of the important chain store establishments and the dates of their organization see "Chain Stores," Hayward and White, McGraw-Hill Book Company.

cluding several foreign continents. Out of every one hundred grocery stores in this country five are operated by this mammoth chain. The growth of the Kroger chain has been ever more pronounced than that of the Great Atlantic & Pacific Tea Company. During the last year this company has merged with as many as ten medium-size chains, increasing its number to a total of five thousand stores. These three chains are singled out as they are probably the most pretentious chains existing. But it must not be forgotten that this "ideal" method of distribution, management and ownership has reached into the far corners of every conceivable kind of merchandise, including as well, theatres, restaurants, hotels, etc. In the grocery store field alone there are some 860 companies operating chains comprising over 64,000 units.²

And what is it that has brought about this magnitude and "bigness" in business? Clark states that the annual volume of business conducted by the Great Atlantic & Pacific Tea Company, 1927, was approximately \$750,000,000. Such a stupendous volume as this surely is "big business" in every sense of the word, especially when one considers the fact that the average individual grocery purchase is not ordinarily large. This great volume is accomplished by the chain apparently selling for a few cents less than the independent stores.

In the two late issues of Collier's Weeklys,³ John Flynn, has written certain articles informing the public in general how yearly the chains saves them enormous sums of money, setting forth how the chains bring about this large saving. Whether or not chain stores enable the consumer to save money is a question concerning which much may be said on both sides. But it is not the purpose of this article to discuss this question.

The rapidity with which the chains have grown during the past several years has caused much alarm and discontent among the independents. The situation has led to the co-operation and organization of the independents, not solely for the purpose of co-operative buying, but to instigate and procure of the State Legislature, bills directly aimed and affecting the chain store

² Evans Clark, in an article appearing in the New York Times, July 8, 1928, gives a list of the merchandising fields covered by these chains. Clark lists nearly a hundred thousand units being operated by some four thousand separate chain organizations.

³ March 30, 1929 and April 27, 1929.

organizations. These laws have been introduced and carried in many of the States. In Georgia, every chain having more than five units was taxed \$250.00 per unit. Maryland placed a tax of \$500.00 upon all chains within its jurisdiction. North Carolina placed a tax of \$50.00 upon every unit of a chain having over six stores within its boundaries. During the last Assembly of the Indiana legislature, a bill was passed whereby every store is to be taxed a specific sum, and each store over one is to pay a higher rate of taxation. The tax rate is graduated similar to the Income Tax Law, the larger the number of units operated by an individual chain, the higher the rate of tax on the stores so operated by that particular organization. A similar bill was introduced in the Ohio legislature, but it failed to receive final consideration before the adjournment of that assembly. The Ohio bill, in addition to the features mentioned in similar bills, included a tax upon the yearly volume of business conducted by the other stores.

A search of the Digest reveals but one of these bills, taxing the chains, having been declared valid or invalid by the respective State Supreme Courts. In the case of the Great Atlantic & Pacific Tea Company, et al. vs. Doughton, Commissioner of Revenues of North Carolina, 144 S. E. 701, some ten chains were joined as co-plaintiffs to recover a fee which they had paid as required by the law of that State, which imposed a tax of \$50.00 on each store over six operated and maintained by any person, firm, corporation or association. The law was passed as a license tax upon the privilege of doing business within that State. The court, in declaring this bill unconstitutional, stated: "----The store maintained and operated by the plaintiffs do not increase fire hazards, no not endanger the health or morals of the community in which they are established,—do not require additional police protection—differ from the stores that are not required to pay the tax—doing a like or similar business.

"Such is not imposed in the exercise of the police power of the state—it is imposed in the exercise of the power to levy taxes solely for revenue purposs. In this case no question of public policy with reference to chain stores is presented on this record.—The tax in question was not laid on chain stores per se nor on the business of operating chain stores."

It is then concluded by the court that "power to classify is recognized—but such must not be arbitrary, unreasonable and unjust.—Any number of chain stores may be operated provided not more than five under the same management, supervision or ownership. Such is an arbitrary distinction and denies equal protection." A concurring Judge went so far as to declare the act to be retroactive in that five stores could be operated, but as soon as the sixth store came into existence, taxes much be paid on the other five.

It cannot be justly denied that the proper conclusion was reached by the Supreme Court of North Carolina. No act will be upheld which is so clearly discriminatory and arbitrary, as was this particular bill. If it were, it would contravene the Fourteenth Amendment to the Federal Constitution which inhibited the States from denying equal protection to persons within its jurisdiction.⁵ But it is desired to call particular attention to the fact that the court stated the act was 'not imposed in the exercise of the police power of the State,' and that 'no question of public policy with reference to chain stores' was presented. Herein the court refused to state its position as to how the chain stores could be placed under operation of that great state authority so commonly known as Police Power.⁶ Thus, it remains an open question in North Carolina whether or not the expansion and control of retail merchandising could be harnessed under the poplice power of the State. It appears that this alone is the proper place for the states to refer for the much needed authority and right to handle this new and dangerous situation.

Recently, suit was filed in the Federal Court, Indianapolis District, to test the validity of the recent exactment placing a license tax on chain stores in Indiana. This law differs from that of North Carolina, in that a tax is placed upon each store, the amount of tax increasing as the number of stores operated by one company increases. It is to be noted that this act was passed under the guise of a licensing measure. The complaint asserts, 'the General Assembly—has no right' to pass such a

⁵ Corporations are persons within meaning of this clause to the Fourteenth Amendment of the Federal Constitution. *Covington, etc., Road Co. vs. Sandford*, 164 U. S. 592; *Northwestern, etc., Insurance Co. vs. Riggs*, 203 U. S. 243.

⁶ The Fourteenth Amendment was not designed to interfere with the police power of the States. *Barbier vs. Connolly*, 113 U. S. 24, 31, 28 L. Ed. 923, 924.

measure "where the license feature has no relation to the public health, safety or morals." It also contended that the bill is discriminatory. No doubt what the complaint desires to assert is that this act has no relation to the police power. But he has failed to include one of the specific divisions included under the police power, namely, that of the general welfare of the public, which is probably as broad and general in its scope as the other three divisions combined. The chain store situation pertains more directly to the general welfare of the people than does the safety, health or morals, although the former two may easily be included therein. As to being discriminatory, this act perhaps will meet with the same decision as did the bill in the North Carolina case (*supra*).

Businesses, for the purpose of licensing, regulating and taxing, have been classified and the classification upheld by several of the States having enacted such legislation. Reasonable classification of persons, property, occupations or businesses for the purpose of license regulation or the imposition of license taxes is not a violation of the guaranty of the equal protection of the laws; but unreasonable and arbitrary discrimination renders the statute or ordinance unconstitutional and void. See 12 C.J. 1155, 890. Legislation which affects one class and not another, but which affects all members of the same class alike, is not unconstitutional as class legislation. And by being a reasonable classification does not necessarily mean what is best, but what is fairly appropriate to the purpose under all of the circumstances. See Words and Phrases.

In *Wingfield, et al. Vs. South Carolina Tax Commissioner, et al.*, 144 S.E. 846, the court in its opinion stated that "subject to certain limitations and restrictions a State Legislature may either in the exercise of the Police Power or for the purpose of revenue require license or impose license taxes on occupations or privileges within the limits of the State when it deems them to be warranted by a consideration of public interest and for the general welfare. It has been held that legislative classification for taxation may be founded, not only upon the nature of the article sold, but upon the manner of conducting the business." And in *Heirs vs. Mitchell*, 116 So. 81, a license fee was declared not to be a tax within the meaning of the provisions of the or

ganic law requiring uniformity of rates, etc.—for the purpose of taxation. See Cooley on Taxation, third addition, 392. "The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police powers, but admits of the exercise of a wide scope of discretion in that regard, and it voids what is done only when it is without any reasonable basis, and therefore is purely arbitrary."

Under these decisions, what is to prevent State legislatures from passing a law affecting the operation and maintenance of chain stores? As the chains materially affect the public interest and general welfare, the States could validly enact laws regulating the same. The matter of conducting business as employed by the chain stores, is repulsive to the principles of legitimate business and fair competition which the government has endeavored to secure. Also, the general welfare of the public is concerned with many products sold by these undesirable legal entities which are the creation of a "big business" monopolistic trust.

But for one exception, the records fail to disclose any of these bills requiring the chains to pay a license tax upon the privilege of operating their stores, to have reached the United States Supreme Court. The exception referred to is not a bill directly aimed at the chain stores, but its ultimate effect has to change the tide of this movement. An Act passed in 1927 by the Pennsylvania Assembly prohibited ownership of any pharmacy or drug store by any one other than a licensed pharmacist with a saving of those lawfully engaged in such business at that time. The constitutionality of this act was contested the same year that it was passed in the case of *Louis K. Liggett Co. vs. Baldrige*, Attorney General of Pennsylvania, et al, 22 Fed. 2d. 993.⁷ The basis of the decision as given by the Federal District Court, appears to be on the firm and substantial ground that the Act was passed with regard to the public interest and safe guard. "----The Act of Assembly should be upheld," said the court, "if the enactment has a substantial relation to the public interest.

⁷ For comment and review of this case see 76 Penna. Law. Rev. 860. The Federal District Court of Pennsylvania, however, was reversed by the United States Supreme Court in 40 Sup. Ct. 57. See also, 4 N. D. Lawyer 39. In *George Evans Inc. vs. Baldrige*, 144 Atl. 97, the Supreme Court of Pennsylvania held the same act to be unconstitutional, awaiting for the decision of the United States Supreme Court in the case of *Liggett vs. Baldrige*, before it entered its final judgment.

We take this to mean that, if there is such relation, the statute cannot be found to be an exercise of the arbitrary power of encroachment upon the personal liberty of any one affected by the law, nor can it be said to be a like arbitrary exercise of the power to take from any one his property."

The court, to a small extent, then considered the relation which the act might bear to the public interest, stating that "it may be the legislature thought a corporate owner in purchasing drugs might give a greater regard to the price than to the quality; and, if such was the thought of the legislature, can this court say it was without a valid connection with the public interest and so unreasonable as to be unlawful? Because of our inability to see where the instant act has no substantial relation to the public interest, we cannot hold it to be unconstitutional." Consider the fact that the corporate owner would give greater regard to the price than to the quality. The reason for such restrictions can be more easily seen in the merchandising of groceries, clothing, furniture, etc. Most monopolies are inconsiderate of their customers and monopolistic tendencies may, for that reason, be considered to be against the general welfare.

On an appeal of this case to the United States Supreme Court, 49 Sup. Ct. 57, it was the opinion of the court that the Pennsylvania Act had no real or substantial relation to the public health and that such relation was necessary in order that the police power may be exerted in the form of State Legislation; that a "State cannot, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

Here there appears to be an inconsistency in the holdings of the Supreme Court. Let us examine the case of *Mungler vs. Kansas*, 123 U. S. 623, 8 Sup. Ct. 273, 31 L. Ed. 205. This decision will be remembered as authority for declaring valid the laws of the various states affecting the manufacture and selling of intoxicating liquors. It is stated that "society has the power to protect itself by legislation against the injurious consequence of that business." (Referring to the liquor business)—"But by whom or by what authority is it to be determined whether" such business "will injuriously affect the public. — Under

our system that power is lodged with the legislature branch of the government—to exert what are known as the police powers of the State and to determine primarily what measures are appropriate—for the protection of the public morals, the public health, or the public safety.—If a State deems the absolute prohibition” of liquor “to be necessary to the peace and security of society, the courts cannot, without usurping legislative function over-ride the will of the people, as they are expressed by their chosen representatives. They will have nothing to do with the mere policy of legislation.”

True, the court states there must be a substantial relation to the public health, but wherein has the court the power to say when this relation does exist? In the Mungler case it was held that the courts could not over-ride the will of the people as expressed by their representatives. This is what the Federal Supreme Court, in reality, actually did do in the Liggett case.

“It is not necessary,” said the court in *State of Louisiana vs. City of New Orleans*, 97 So. 440, 33 A.L.R. 260. “for the validity of the ordinances (speaking of zoning ordinances) in question that we should deem the ordinances justified by consideration of public health, safety, comfort, or the general welfare. It is sufficient that the city council, (the legislative function of a municipality) could reasonably have had such consideration in mind. If such consideration could have justified the ordinance, we must assume that they did justify them.” Again, it is seen that it is for the legislative function acting under the police power to decide what is needed for the public health, safety, morals and general welfare.

Justice Holmes, in which Brandies concurred, wrote a dissenting opinion to the Liggett case (*supra*) in which he stated that he, “thought, however, that the police power, as that term has been defined and explained, clearly extends to a law like this.”

Under what circumstances were the prohibition laws enacted? A minority favoring this law enactment caused a large quantity of propaganda to be circulated, whereby public sentiment was aroused in their favor. This was carried to the representatives through the medium of lobbyists, who succeeded in placing such laws before the law-makers. When the law was

brought before the courts to determine the constitutionality, the courts invoked the police power, being of the opinion that as it was what they, the people, desired, it was for their benefit and general welfare.⁸

In this same manner the public must be educated concerning the methods employed by the chain stores; how the chains employ deceptive methods whereby the public is tricked into believing they are getting standard quality as well as quantity merchandise; how the chains could eventually demoralize a community, and perhaps an entire state, in that their entire receipts are sent from out the community, and most times the state, expending therein only that necessary for their operation, namely, for employees wages, taxes and renting or leasing of property.

As we have seen, strictly speaking, the Federal Government has no police power. But, because it is not custodian of the public general welfare, is there no other method of attack whereby this centralized national government of the American populace can reach the stronghold of the chain store movement with its rapidly increasing trend towards monopoly and trust? Surely there is, and that is thru the channels of the Federal Trade Commission, which body should invoke, without further delay, the Federal Anti-Trust Laws. Especially applicable to the present situation, as described in the first part of this article should be the Sherman Anti-Trust Act of 1899 and its succeeding enactment, the Clayton Act of 1914. Of course, it must be borne in mind that these acts apply only to Interstate Commerce, as the Federal Government is limited in its control over that commerce which is carried on between the several states. The chain stores, however, could never conceive the idea that they were not within the Interstate Commerce power of the Federal Government, as they have not only achieved a national, but as well, an international aspect.

The Sherman Anti-Trust Act of 1890, Sec. 8820 of the United States statutes states that "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states—is hereby declared to be

⁸ An analagous case is that of lottery tickets. Some of the earlier decisions denied that lottery contracts could be impaired by subsequent legislation. *Kellum v. State*, 66 Ind. at 597; *Gregory v. Trustees, 2 Mite (Ky.)* 589. But in *Stone v. Mississippi*, 101 U. S. 814, 25 L. Ed. 1079, a state law impairing such lottery tickets was upheld as lotteries were declared to be against public morals and the general welfare.

illegal—" This act was designated as "An Act to protect trade and commerce against unlawful restraints and monopolies." Mr. Montgomery, in his *Financial Hand Book*,⁹ 1388, summarizes this Act as forbidding "All unreasonable restraint of trade by declaring illegal: 1, every contract, combination or conspiracy between two or more parties which directly restrains interstate trade or commerce; 2, every act of a person which shall monopolize or tend to monopolize the trade of the several states."

From the expressed terms of the Act, the purpose and reason for the enactment can be easily seen. The United States Supreme Court in *United State vs. Standard Oil Company*, 31 Sup. Ct. 502, 221 U. S. 1, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, commencing upon the purpose of the Sherman Act stated that such was "to prevent the stifling and the substantial restriction of competition in interstate and foreign commerce, and to keep the prices of articles and such commerce open to free competition, and any contract or combination of two or more parties whereby the control of prices is taken from separate competitors in the trades, and vested in a person or in an association of persons, restricts competition and restrains commerce."

The test of the validity of a contract, combination or conspiracy challenged under the Federal Anti-Trust Act, is the direct effect of such a contract or combination upon competition in commerce among the States. If its necessary effect is to stifle competition or directly and substantially to restrict it, is void. 64 L. R. A. Note 689.

The question is—does it impose any restraint whatever? If it does, no matter how little or reasonable it may be, it is within the prohibition. Its provisions make it unlawful to monopolize, or attempt to monopolize, any part of the trade or commerce among the several states.

Apply the terms of the Sherman Act to several of the gigantic chains now in existence, taking for example the Great Atlantic & Pacific Tea Company or the Kroger Grocery & Baking Co. Both of these corporations have been contented, not with cutting price from merchandise they offer to the consumer, but they have purchased outright large canneries, bak-

⁹ See "Financial Handbook" by R. H. Montgomery, section 27, *Federal Regulation of Business*, page 1388, for a summary of the Federal Laws affecting interstate trade or commerce and an explanation of their terms with cases there cited.

eries, packing establishments, etc., as well as having controlling stock in many others, which no doubt, they will eventually amalgamate if not estopped by the Federal Trade Commission.¹⁰ What is to prevent either one of these companies from effecting a super-monopoly of the commodities which they offer for sale? Nothing. By the terms of the Sherman Act. we have seen that any act of a person which, not necessarily is a monopoly, but that which tends to monopolize the trade of the several states, is illegal. See *Standard Oil Co. vs. United States*, 221 U. S. 1.

The next point to consider is whether such monopoly or tendency towards monopoly, is an unreasonable restraint of trade. Little time need be spent here as in the case of *Board of Trade of Chicago vs. United States*, 246 U. S. 231, the court held the final test whether or not an act is an unreasonable restraint is determined by the intent of the parties and the nature of the act which, if it has within it the power to suppress competition, is viewed as an act in restraint of trade. How can it be said that the nature of the acts of chain corporations is not to suppress competition? In case they encounter competition they at once proceed to buy the company, or stores, thus eliminating as much competition as possible. This is borne out through the purchase of some ten chains by the Kroger Corporation during the past year. The chain organization admit they already have eliminated the independent store competition, and that the competition is now between the chains, themselves.

And reasonableness of a restraint is determined largely by the effect of the restraint. The affect must be on the public in general rather than on an individual. *United States vs. D. L. & W. R. R. Co.*, 238 U. S. 516. Surely it cannot be said that the effect of the chain stores is upon the individual only, as an individual store operator, but rather is upon the public in general, as it is its welfare that is being ururped. Then again, it is maintained that any restrictions tending to suppress competition and preventing trades from transacting their business in their usual manner is an injury to the trader and to the public.

¹⁰ Evans Clark states that the Whalan-Schulte combine, working in close co-operation, jointly own the Union Tobacco Company, which owns ten manufacturing concerns; the Schulte-United 5c to \$1 stores dealing in general merchandise; control the United Retail Chemists Corporation with a substantial interest in the Happiness Candies and Life Savers Inc.; and interest in the Djer-Kiss perfumery company as well as restaurants, lunch shops and grocery concerns.

Also, reasonableness of the restraint may be connected with the methods of trade. It has been held that where control was acquired by the usual and fair methods of business, in open competition, such monopolistic acquisition was valid. On the contrary, however, the use of unfair methods of business constitute unfair methods of competition, as for example, the practice with the intent of misleading and confusing the trade and the public as to what it is actually purchasing. Unfair methods of business have been divided into two classes—those which offend good morals, such as fraud, deception, bad faith, etc., and those having a tendency to limit competition, tend towards monopoly, or are against public policy. In this article we are not prepared to discuss the former division, but it has been proven that the chains employ methods offensive to good morals. However, these corporations should clearly come within the latter division. As we have seen, limitation is placed upon competition and they tend towards monopoly, if not in fact, at the present time, a monopoly, in that anything tending to destroy competition tends toward monopoly. The chains are against public policy in that they are a potential, economic menace. Although it has been stated that the chain store is the ideal method of economic distribution, chains tend towards destruction of sound, economic principles, namely, that all persons should have an equal opportunity to participate in their desired field of endeavor; and the chains prevent the working of this principle.

To this point we have been dealing solely with the Sherman Act. This Act was supplemented by the Clayton Act of 1914 by regulating trade practice not dwelt with in the Sherman Act. The outstanding development of this act was that it regulated price discrimination stating that "It shall be unlawful for any person engaged in commerce—either directly or indirectly, to discriminate in price between different purchasers of commodities—where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce." Sec. 8835 b. U. S. Statutes. This act has been the subject of much litigation in that it prohibits the fixing of a definite re-sale price whereby the manufacturers contract with the jobbers or the retailers, not to resell their articles at less than the price so set by the manufacturer. The United States

Supreme Court has held in all cases, which involved this proposition, that maintaining of resale price was invalid under the terms of the Federal Anti-Trust Laws. This court declares that competition is suppressed because the buyers agree not to sell below the price. *United States vs. Schrader's Son, Inc.*, 64 L. Ed. 471; *Frey & Son, Inc. vs. Cudahay Packing Co.*, 65 L. Ed. 892; *Boston Store of Chicago vs. American Graphophone Co.*, 62 L. Ed. 551; *Butterick Co. et al vs. Federal Trade Commission*, 4 Fed. 2d 910. In *J. W. Nobi Co. vs. Federal Trade Commission*, 22 Fed. 2d 41, the District Court declared in its opinion that 'the basis of the condemnation of the resale price fixing is the elimination of competition as represented by the prices among distributors of a product on which the resale prices were so fixed, and it has the danger of a distinct monopolistic effect.'

The Federal Trade Commission has been conducting an investigation concerning price resale maintenance and have failed to report favorably concerning legislation declaring such acts valid. Mr. Flynn, (*supra*) states that the independents are desirous of having Congress pass an Act whereby it would be lawful for the manufacturer to contract with the buyer upon the stipulation not to resell below the price fixed. He maintains that if such a bill were passed, the chain stores, because of being forced to discontinue selling at cut prices, would be benefitted and compelled to take the larger profits which they had been giving the public the benefit of; that they would continue to operate as cheaply and would not be permitted to give the public the benefit of their supposedly efficient operation and management.

Nevertheless, there may be several points in favor of amending the Trust Laws in this respect. By being permitted to contract for price resale maintenance, the chains would be compelled to sell standard, quality, nationally advertised commodities at the same identical price as would be the independents. The chains thereby, would lose their "leaders" and the independents would be given an equal chance to compete against the "power" establishments. We have seen in the above that the chains are enabled to place the merchandise at the disposal of the consumer with but a 2 per cent advantage over their competitors, if we may so term the independent stores. Whereby their profits on the

"leaders" are not going to be much greater, because at the same time they are going to sell considerably less merchandise than if permitted to cut the price. Nearly two-thirds of these answering an inquiry made by the Federal Trade Commission concerning this subject stated they were of the opinion that such a bill would handicap chain stores, or at least eliminate some of the advantages they now enjoy.¹¹

What is to prevent one of these chains from combining and merging the entire field of chain stores into one giant super-trust? Clark, in his article, (*supra*) mentions that E. A. Filene predicts a super-trust serving the entire nation with every conceivable kind of merchandise. The Federal Trade Commission is, at the present time, conducting an investigation of competitive conditions and consolidations among chain store organizations in order to ascertain whether or not the Anti-Trust laws have been violated. If the Commission fails to report that the Federal Anti-trust laws have been violated by the chains, why should not this commission be estopped from bringing any similar action when a super-chain, super-trust does appear? The Federal Courts have not been confronted with this question, but they, too, should be estopped if they found no trust existing in the restraint of competition of trade and commerce. Such a super-trust super-chain may seem very improbable, but in reality it is not. And when this situation makes its appearance, which can be but a short time hence, at the rate the larger chains have been absorbing thru merger the smaller chains, the government will be compelled to intercede and control and regulate the same as the public utilities are regulated at the present day. And if the government must assume control and regulation it (the government) will take upon itself a complex of a socialistic state, which indeed is contrary to the principles and high aims of our nation's founders.

"It is better," said Clark, (*supra*), "at least from an economic point of view—to be an employe-manager of one link in a chain—than the harried monarch of a precarious business of your own." This is a dangerous doctrine. The business of this country has changed from an individual complex to one of a

¹¹ For a complete report of the Federal Trade Commission's investigation concerning price resale maintenance see Part One of that body's official United States report.

collective complex, and it is this collective complex which will bring about an unpreventive socialistic state. The public appear as being desirous of having the government regulate their very livelihood. Some may not desire this, but the present chain situation may force it upon them. It is time that the people awake to the happenings about them, think for themselves, and once again assume an individual complex which is necessary, to a large extent, for the expediency of a lasting national government.